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Testimony in Support of SB 660

An Act Requiring Drunken Drivers to Maintain a Period of
Continuous Sobriety

Good morning Senator McDonald, Representative Lawlor and Members of the Joint Committee on the Judiciary. My name is Larry Long and I am the Attorney General of South Dakota. I have held that position since January 2003. I previously served as the Chief Deputy in the South Dakota Attorney General's Office for twelve years. From 1973 until 1990, I was a county prosecutor in rural Bennett County, South Dakota. I submit this testimony in support of SB 660, An Act Requiring Drunken Drivers to Maintain a Period of Continuous Sobriety.

I have been a prosecutor for over 35 years and have prosecuted hundreds of drunk drivers and felons of all types. The most consistent common trait across all criminal prosecutions is alcohol and illegal drugs. The individuals who enter the criminal justice system on a repeat basis nearly always suffer from an addiction to alcohol or illegal drugs. Their addiction to alcohol or illegal drugs drives their conduct.

After several years of having observed this phenomenon, the Bennett County Sheriff and I asked the local judge (as an experiment) to impose a special set of bond conditions on those

individuals who are arrested for drunk driving or other crimes involving alcohol. The bond conditions were:

- 1) the defendant must abstain totally from alcohol consumption;
- 2) the defendant must stay out of any establishment where alcohol is available for purchase and consumption on the premises; and
- 3) the defendant must report to the sheriff's office twice daily at 7 a.m. and 7 p.m. and submit to a breathalyzer test to determine whether he is in compliance with condition #1.

Any defendant who failed to appear or appeared and blew a hot test, was immediately incarcerated for violating his bond conditions. The judge would hold the individual for 24-48 hours, reimpose the bond conditions and release the defendant with another chance to stay sober. After the judge implemented this procedure, we immediately noticed that the participants had an extremely high degree of compliance. Over 99 times out of 100, the individual would appear on time and blow a clean test. We were able to keep participants sober for several months even though they had been drinking irresponsibly for decades.

We noticed immediate benefits. First, the participants, with few exceptions, ceased to be a law enforcement problem. When they were not drinking, they were not in trouble. Second, their families were safer and happier. There is a significant connection between alcohol abuse and domestic violence. When the participant was sober, he was much less likely to abuse his family. The families were very appreciative that mom or dad was in our program. Third, our jail numbers went down. Because the participants were a reduced law enforcement risk when sober, the judge was much more inclined to grant pre-trial release conditioned upon twice-a-day testing. Fourth, treatment prospects improved. We observed that individuals who had been sober for several weeks in our program, prior to entering a

treatment program, demonstrated better long term treatment outcomes than those who had not participated. Fifth, we were able to accomplish this at very little cost to the taxpayer. The testing machinery is very inexpensive and the testing was accomplished with existing personnel.

In 2004, South Dakota Governor Mike Rounds appointed me to a working group on Corrections and charged the group to recommend strategies to reduce the increasing population of the South Dakota Penitentiary. I suggested a variation of the program I had used many years before in Bennett County. My belief then was, and continues to be today, that the key to reducing jail and prison populations in this country, is to break the defendant's addiction to alcohol/drugs. If the defendant can achieve long term sobriety, he will cease to be a participant in the criminal justice system. The state will no longer have to arrest and rearrest him, incarcerate him, appoint counsel for him, try him, or care for his abused children and family.

Based upon a recommendation from the Governor's working group, I commenced a pilot program in three counties in February of 2005. That pilot has become known as the 24/7 Sobriety Project. The pilot group was anyone arrested for DUI who had a prior DUI conviction within the previous ten years. Our goal was to keep participants sober from the moment of their arrest through the pre-trial process until their case was resolved via a plea and sentence or dismissal. Our program was successful enough that the South Dakota Legislature authorized a statewide program effective July 1, 2007. The current 24/7 Sobriety Project includes all alcohol and drug related crimes. Judges are authorized to impose the testing conditions at both pre-trial and post conviction (probation). The South Dakota Parole Board is authorized to place inmates in our program as a condition of parole. Juvenile court judges are allowed to place parents and adult caregivers of abused and neglected minor children in our program to protect the children, if the judge believes that the children have been abused or neglected as a result of drug or alcohol abuse by the parents.

The program has demonstrated great success. From the inception of the program through January 8, 2009, the 24/7 Sobriety Project had 10,077 twice-per-day participants. Those individuals have been tested 1,705,717 times. 1,698,771 of those exams were successful, meaning that the individual showed up on time and blew a clean test. Our success rate is well in excess of 99%. About 2/3rds of our participants have perfect attendance, meaning that they show up on time every time and blow a clean test. Participants average 85 days in our program.

Some individuals cannot, for legitimate reasons, get to the test site twice per day. Those people wear a leg bracelet which tests the emissions from the wearer's sweat glands for the presence of consumed alcohol on an hourly basis and transmits that information remotely to the vendor's computer. The bracelet information is interpreted by the vendor's staff and the results are sent daily to the participant's supervisor (sheriff or probation officer) via e-mail. From November 6, 2006, through February 28, 2009, 1,217 participants have worn the bracelet 135,287 days or an average of 111 days per participant. 945 participants (78%) have had no violations. We are very happy with this number.

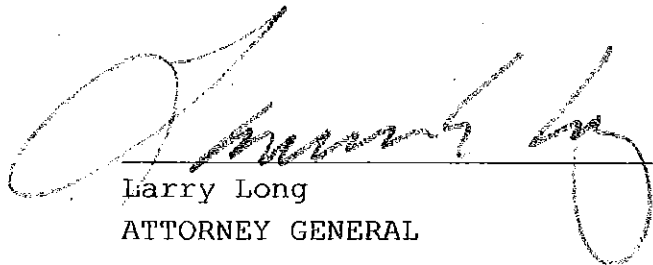
These people are staying sober for three reasons. First, they have been ordered to stay sober by a judge. Second, they are being tested frequently enough that drinking between tests, although possible, is very difficult. Third, each and every violation results in immediate incarceration for 24 hours.

We also provide testing for illegal drugs.

I have reviewed SB 660. SB 660 will require continuous sobriety for at least 120 days following a conviction for DUI 2 and one year of continuous sobriety upon conviction of DUI 3 or higher. I support the continuous sobriety required by SB 660. Our South Dakota experience shows that individuals who have been sober for several weeks prior to entering a treatment program, will demonstrate superior long term treatment outcomes than those who do not. Simply stated, these people maintain sobriety

much longer than those people who have not participated. In addition, South Dakota's traffic fatalities have dropped from 191 in 2006 to 146 in 2007 to 121 in 2008. South Dakota's prison population has dropped from 3,428 in 2006 to 3,378 in 2007 to 3,324 in 2008 after having risen by an average of 152 per year for the previous ten years. The reduction in traffic fatalities and prison population have several contributing factors. One contributing factor is the South Dakota 24/7 Sobriety Project. I commend your efforts in SB 660. Every time you can help a defendant attain long term sobriety, you are making progress towards a solution for this very intractable problem. Thank you for allowing me to testify.

Dated this 11th day of March, 2009.



Larry Long
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